The WCB Appeal System: Are They Working Well?

- **Discussion Guide**
- **Survey**

REVIEW COMMITTEE
OF THE
WORKERS' COMPENSATION BOARD
APPEAL SYSTEMS

100-07411/

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APPEAL SYSTEMS REVIEW COMMITTEE

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Dear Survey Respondent:

In February of this year, the Honourable Clint Dunford, Minister responsible for the Workers' Compensation Board (WCB), set up a committee to review the effectiveness of the WCB appeal systems, and the Appeals Commission. The Committee is to provide a final report and recommendations to the Minister this fali.

During the last four months, the Committee has met with several employers, workers and advocates. As well, we have had discussions with the executive and staff of the WCB and the Appeals Commission. In addition, we have reviewed many written submissions and are continuing to catalogue the identified concerns. As a very important part of our research and information gathering process, the discussion paper and survey are being sent to you. The discussion paper reflects what we have heard in the first part of our review. It identifies key issues raised with us and provides background about the appeal process within the WCB, the Appeals Commission and other jurisdictions. You are encouraged to read the discussion paper before completing and returning the survey in the enclosed postage paid envelope.

You may be wondering how you came to receive our discussion paper and survey. The following describes how we tried to ensure that a good representation of individuals have an opportunity to provide feedback regarding their experiences with the appeal systems:

1. If you have recently written to the Honourable Clint Dunford regarding workers' compensation concerns, your name may have been selected.

2. If you have sent a written submission to me, made an oral presentation to the Committee or requested a survey, your name was included in the mail out.

3. If during 1997, 1998, or 1999, you appealed to the Claim Services Review Committee (CSRC) and went no further or went on to the Appeals Commission, your name may have been selected.

The Committee is aware of the obligation to protect your privacy as required by the Freedom of Information and Privacy Act. Keeping this important requirement in mind, the WCB and the Appeals Commission were each asked to provide a list of all the claim numbers that were the subject of appeal in the years mentioned above. They did not provide any other information about you except your claim number. I then randomly selected numbers from each list and returned the corresponding list of claim numbers to the WCB or the Commission. They each matched the selected numbers to the correct addresses, printed mail labels and mailed the envelope you have just received. In order to protect the privacy of your file, we enlisted the assistance of the WCB and the Appeals Commission for the mailing process, as the Committee is not entitled to see the names of those who have gone through either appeal system.

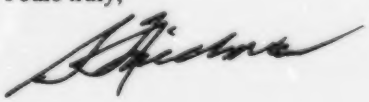
The survey is anonymous. We have not developed a tracking system to match responses to claim numbers. If you have appealed through both the CSRC and the Appeals Commission, it is possible that your claim number was selected twice. If this has occurred, you may receive two surveys. Please discard the extra document or preferably, give it to another appellant you know who did not receive a survey, and wishes to participate.

If you choose to identify yourself, the confidentiality of your responses will be protected. The WCB and the Appeals Commission will not receive any information regarding your response. This is your opportunity to provide first-hand-information regarding your experience in the appeal process.

In order to help us make good recommendations to improve the effectiveness of both appeal systems, we ask that you complete the survey and return it to us in the envelope provided by **JULY 31, 2000.**

Thank you.

Yours truly,



Samuel Friedman, Q.C.
Chairman

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Review Committee of the Workers' Compensation Board Appeal Systems Discussion Paper

A. What is the Appeal Systems Review?

1. Scope and Purpose of the Appeal Systems Review

- On February 11, 2000, the Honourable Clint Dunford, Minister Responsible for the Workers' Compensation Board, (WCB) announced the formation of the Review Committee of the Workers' Compensation Board Appeal Systems.

- The scope and purpose of the Committee is to:
  - examine the WCB Appeal Systems, consisting of the Assessment Review Committee and the Claims Services Review Committee at the first level, and the Appeals Commission at the final level;
  - conduct a paper review of practices in other jurisdictions;
  - determine the effectiveness of the appeal systems in serving Alberta employers and workers; and,
  - make recommendations for improvement of the appeal systems.

2. Expectations of the Appeal Systems Review Committee

- During its review process, the Committee will:
  - develop a discussion paper describing the appeal systems and, upon careful review of the appeal systems process, identify probable key issues for review by stakeholders;
  - prepare a survey for stakeholder input to accompany the discussion paper;
  - analyze and summarize stakeholder input received from returned surveys and other sources;
  - draft a final report containing recommendations for improvement to the appeal system; and,
  - submit the final report in October, 2000 to the Minister Responsible for the Workers' Compensation Board, who will forward the report to the Workers' Compensation Board and the Appeals Commission.

3. Appeal Systems Review Committee Membership

Members of the Appeal Systems Review Committee are:

- Chairman: Samuel Friedman, retired Judge, Alberta Provincial Court
- Denis Herard, MLA Calgary-Egmont
- Robert R. Blakely, President, Alberta and N.W.T. Building and Construction Trades Council
- Sharon Copithorne, Executive Director, Alberta Construction Association
- Fred W.R. Clarke, Alberta Business Community Representative

B. What are the key issues affecting the WCB Appeal Systems?

From its review and observations, stakeholder presentations, and written submissions, the Committee identified a number of key issues affecting the WCB appeal systems. This section is a listing of these key issues.

In this paper, the following terms are used:

- Advocate: any person (not a WCB employee) who represents the interests of a worker or an employer in the appeals process
- Appeals Advisor: a WCB employee who represents the interests of a worker in the appeal process
- Appellant: a worker or employer who appeals a WCB claim or an employer who appeals a premium assessment
- ARC: Assessment Review Committee
- Board: the Board of Directors of the WCB
- Case Managers: a WCB employee who manages a worker's claim.
- Claimant: a worker who files a claim with the WCB
- CSRC: Claims Services Review Committee
- Level I Appeal: the first level of appeal to the CSRC or ARC
- Level II Appeal: the second level of appeal to the Appeals Commission
- Medical Advisors: doctors who are employed or contracted by the WCB and who provide medical opinions to WCB case managers on worker claims
- WCB: Workers' Compensation Board

General Issues

1. **Two levels of appeal**
   Some people question the need for the two levels of appeal currently provided to injured workers and employers.

2. **Appropriateness of supervisory review**
   Before the appeal process begins at the CSRC level, the case manager or supervisor carries out an informal review. Under Section 12(3) of the *Workers' Compensation Act* (*Act*), the WCB has the right to "reconsider any matter it has dealt with and to rescind or amend any decision or order previously made by it".

   The decision on benefit entitlement or amount of benefit is therefore reviewed again. Some people question the appropriateness of this review, once claimants have formally notified their case manager of their intent to appeal. As well, some people are concerned about significant delays in completing this review: for example, when the initial decision remains unchanged, too much time elapses before the appeal is forwarded to the CSRC.

3. **Lack of openness and understanding**
   Some people believe that the WCB appeal systems lack openness, and are not easily understood by users. Claimants often need costly, specialized help to go through an appeal, which they frequently cannot afford.

4. **Application of the benefit-of-doubt policy**
   Some people are concerned about the correct application of the benefit-of-doubt policy in the appeals decision-making process. This policy states that, where there is an equal split in evidence, the worker should benefit (General Policies-01-03). Some people believe that the appeal bodies frequently base their decisions on the minority opinion, which often does not favour the worker. These people contend that the benefit-of-doubt is instead given to the employer.

5. **Need for appropriate, objective, knowledgeable representation**
   The WCB appeals process is complex, and is not easily understood by workers and many small business employers. The WCB currently provides Appeals Advisors to help workers with their appeals. Some people suggest that this service be extended to employers. Other people suggest that the WCB might facilitate training and standards for advocates who represent workers and employers through the appeals process.

6. **Appeals Advisors employed by the WCB**
   Appeals Advisors, who provide free advice and appeal representation to workers during first and second level appeals, are employees of the WCB. Some people believe that the Appeals Advisors may be biased in the advice they provide, because they lack independence from the WCB.

7. **Conflicting medical opinions**
   Some people believe that the appeals process is complicated and prolonged when there are differing medical opinions provided by a worker's family physician, Board Medical Advisors, or Appeals Commission Medical Advisors.

8. **Differing rights and access to information**
   Both appellants and advocates indicate that they do not have the same rights and access to information as do the Appeal Advisors who are employed by the WCB.

9. **Use of mediation prior to commencement of appeals process**
   Some claimants contend that they have few resources to obtain an objective opinion on the correct interpretation and application of policies related to their claims. Claimants often do not know what benefits they may be entitled to, or they may be unable to identify which policy interpretation affects their benefits. In these situations, the claimants either assume that they have been dealt with correctly, or they proceed to appeal. Some people suggest that there may be a role for a mediation process prior to the appeal process.

10. **WCB Medical Advisors documentary reviews**
    WCB Medical Advisors currently conduct documentary reviews of a worker's injuries in the absence of the claimant. Some people believe that the Medical Advisor should be compelled to discuss the matter with the treating physician and interview the worker, especially when a Medical Advisor's advice differs from the diagnosis of the treating physician.

11. **Cost of obtaining another medical opinion**
    Injured workers who need to obtain another medical opinion for a medical review must pay their own third party medical costs. Many people believe that such costs are too expensive for workers, and often leave them unable to obtain the medical evidence they need to assist with their appeal.

Claims Services Review Committee (CSRC) and Assessment Review Committee (ARC) Issues

1. **Appointing single-member review committees**
   According to legislation, both the CSRC and ARC can strike single member committees to review and provide a decision on claimant appeals. Some people believe that a "one-member committee" cannot provide an impartial review.

2. **One-year time limit**
   Workers and employers have one year to appeal a case manager's decision under Sections 40 and 116 of the *Act*. Even though an extension may be granted for justifiable reasons, some people are concerned that this period of time is too long. Other people believe that the one year period is long enough.

3. **CSRC review at first level of appeal**
   The CSRC has the authority not only to rule on matters being appealed, but also is able to vary or reverse any prior decisions made in the claimant's file. Some people believe that the CSRC should review only information on the current appeal. These people are concerned that appellants may run the risk of losing on more matters than those being appealed. Some people believe that appellants do not understand the scope of the CSRC review, as they have indicated they do not receive notice on all matters that are open to review.

4. **Objectivity of the CSRC and the ARC**
   Both CSRC and ARC are internal to the WCB. Some people are concerned that objectivity in conducting case reviews and appeals could be compromised, since there is a perceived lack of independence in the decision-making processes.

5. **Proper weighing of evidence**
   Some people believe that evidence is not fairly weighed, and that decisions often appear to be based on opinions that are unfavourable to the claimant.

6. **Requirements to ensure proper investigation**
   Some people are concerned about the claimants' lack of ability to enforce their rights for a proper investigation of their claims. This is particularly evident when claimants dispute the factual statements of their employers or other witnesses.

Appeals Commission Issues

1. **Common appointment reporting and payment source**
   Both the Board and Appeals Commissioners are appointed by the Lieutenant Governor by Order in Council on recommendation of the Minister Responsible for the Workers' Compensation Board. Both the Board of Directors and the Chief Appeals Commissioner report to the same Minister. Administration costs and the salaries of the Appeals Commission are paid from the Accident Fund that is administered by the Board. Therefore, some people are concerned that the Appeals Commission does not appear to be independent of the WCB.

2. **Decisions based on case merits, rather than on precedence**
   Appeal decisions are currently based on the merits of each case, rather than on case precedence. Although there are differences in individual cases, there is no complete source of public record of prior appeal decisions to encourage consistency in the decision-making process. Some people support a greater balance between case merits and precedence in the decision-making process. These people believe that this balance is essential to the perception of fairness and consistency.

3. **WCB request for automatic intervener status**
   WCB has made requests to the Appeals Commission for the WCB to selectively become an intervener. If this were granted, the WCB would have status to appear before the Appeals Commission and be heard. To date, the Appeals Commission has not agreed to this.

4. **Impartiality of Appeals Commissioners**
   Appeals Commissioners are chosen on the basis of representing either employers or employees. Some people have complained that this causes certain Appeals Commissioners to be biased or adversarial with appellants who appear before them.

5. **Role of the Hearing Registrar**
   Hearing Registrars are employees of the Appeals Commission. They provide technical support to hearing panels, as well as advice regarding legislation, policy, and practice of the WCB. Some people question the Hearing Registrars' objectivity, because most, if not all, Hearing Registrars are former WCB employees. The Hearing Registrars are seen by many people as simply extensions of the Board.

6. **Lack of preparedness**
   Some people complain that certain Appeals Commission Hearing Panel members are not prepared for the case before them.

7. **Lack of clarity in written decisions**
Some people believe that the Appeals Commission's written decisions lack clarity and completeness. They note that the written decisions do not always adequately explain why some evidence is given more weight than other evidence.

8. **WCB Board power of reconsideration**
The Board has the authority under Section 8(7) of the *Act* to ask the Appeals Commission to reconsider a decision it has made based on an incorrect interpretation of policy. Some people are concerned that this power of reconsideration undermines the authority of the Appeals Commission.

9. **Lack of ability to enforce decisions**
The Appeals Commission has no enforcement powers. Some people complain that the WCB only partially implements or delays implementation of Appeals Commission decisions. For example, the WCB may not implement a favourable decision for a claimant for several months. Some people question the Appeal Commission's inability to hold the WCB accountable for implementing appeal decisions.

10. **Hearing Chairs who have some legal training**
Some people suggest that one of the qualifications for Appeals Commission Hearing Chairs should be legal training.

11. **Limitation on the matters acceptable to the Appeals Commission for hearing**
The Appeals Commission can hear only matters that have been heard previously by the CSRC or ARC. If new appealable matters arise after the Level I appeal (CSRC or ARC), the appellant must return to the Level I process and begin again. Some people think that the Appeals Commission should be able to hear these new appealable matters without the appellant returning to Level I.

C. What is the Claims Services Review Committee (CSRC)?

1. The CSRC Today

- The first level of statutory appeal is to the Claims Services Review Committee (CSRC). The CSRC deals primarily with appeals by either workers or employers on whether a worker is entitled to benefits or increased benefits. It also has the authority to review previous decisions made on a claim, even though these decisions are not necessarily listed as items of appeal.

- As a department of the Workers' Compensation Board, the CSRC serves the Board's mission, " WCB-Alberta, working together with our partners, will

significantly and measurably reduce the impact of workplace illness and injury on Albertans".

- Between 1995 and 1999, an average of 3,434 appeals per year have been made to the Claims Services Review Committee.

TABLE ONE
Number of CSRC Appeals Received and Decisions Upheld, 1995 – 1999

	1995	1996	1997	1998	1999
Number of WCB Claims Administered	154,995	161,276	177,317	188,639	204,502
Number of Appeals Received	3,548	3,148	3,264	3,391	3,820
Number of Decisions Made	3,806	3,089	2,627	2,726	3,083
Number of Claimant Services Decisions Upheld	2,810	2,251	1,913	1,889	2,153
Percentage of Claimant Services Decisions Upheld	74%	73%	73%	69%	70%

- The CSRC conducts two types of hearings: documentary (files only) or in-person. During 1999, there were 1,103 (36%) documentary hearings and 1,959 (64%) in-person hearings. These statistics include both worker and employer appeals.

- On September 30, 1999, 66% of appeals to the CSRC were completed within 90 days, and 91% within 180 days.

2. Appointment Process

- Under the *Act* Section 39.1(1), the Board appoints a Claims Services Review Committee consisting of not fewer than three persons, one of whom is designated as the chairman of the Claims Services Review Committee.

- The CSRC is a department within the WCB, and the members of the CSRC are WCB employees with considerable experience in claims adjudication and case management.

- The CSRC ensures that if one of their members had previous involvement in the adjudication of a claim being appealed, that member is not allowed to hear that particular appeal.

3. Mandate, Jurisdiction, and Authority

- The CSRC is mandated to deal with appeals presented by workers or employers as to benefit entitlement or increased benefits.

- Under Section 40(1) of the *Act*, the injured worker has one year from the date of the decision to seek a review by providing a written notice of appeal to the case manager. This one-year period may be extended if the CSRC chairman determines there is a justifiable reason for extending the time limit. The Chairman's decision to extend or not extend the one-year period is not appealable.

- The CSRC will then review all information in the Board's possession before upholding, varying, or reversing the initial decision made by the claims adjudicator. The CSRC has the authority under Section 40(5) of the *Act* to review not only the matters being appealed, but also any other decisions made on the claim. This means they can confirm, vary, or reverse decisions that are not being appealed.

- According to Section 39.1(2) of the *Act*, one or more members of the CSRC can conduct a review under Section 40 on behalf of the Committee. Where an appeal is particularly complex, a panel of three or more members usually hears the appeal.

- Decisions made by the CSRC may be appealed by the affected worker or employer in writing to the Appeals Commission. The written notice must be received by the Commission within one year from the date the CSRC made its decision.

4. Accountability

- The CSRC is accountable to the Secretary and General Counsel of the WCB, and, ultimately, the WCB Board of Directors.

5. Reporting Relationships

- The CSRC reports directly to the Secretary and General Counsel of the WCB.

6. Relevant Legislation

- The jurisdiction of the CSRC is set out in Section 40 of the *Workers' Compensation Act.*

See Page 5 for a listing of key issues relating to Level I appeals

D. Who are the Appeal Advisors?

- Once a worker submits a written request to appeal a claim decision, the services of an Appeal Advisor may be accessed. These individuals are employed by the WCB, and advise injured workers of their rights under the *Act*. They are able to provide information about policy and process, as well as represent injured workers in their appeal to the CSRC or the Appeals Commission at no charge. Appeals Advisors strive to resolve appeal issues with the case manager and supervisor so that a formal appeal hearing is not needed.

- Workers may also obtain appeal assistance outside the WCB from lawyers, union representatives, or other advocates.

- At the request of the appellant, Appeal Advisors help prepare and present an appeal as the worker's representative at the CSRC or the Appeals Commission.

- The services of Appeal Advisors are not provided to employers.

See Page 4 for key issues relating to Appeals Advisors Level I appeals.

E. What is the Assessment Review Committee (ARC)?

1. The ARC Today

- The ARC has received an average of 51 appeals each year since 1994. Since then, there has been a steady decrease from 74 appeals in 1994 to 34 appeals in 1999.

TABLE TWO
Number of ARC Appeals Received and Decisions Upheld, 1995 – 1999

	1995	1996	1997	1998	1999
Total Number of Employer Accounts Open at Year End	72,633	76,533	82,995	87,134	90,989
Number of Appeals Received	63	50	43	45	34
Number of Decisions Made	66	48	36	33	30
Number of Employer Services Decisions Upheld	42	32	24	26	23
Percentage of Employer Services Decisions Upheld	64%	67%	67%	79%	77%

2. Appointment Process

- The ARC consists of a full-time Chair and one other full-time member. All members are full-time employees of WCB. On occasion, other WCB employees may be invited to sit as part-time ARC members. A member who was previously involved with the decision being appealed cannot hear that particular appeal.

3. Jurisdiction and Authority

- The ARC is responsible for processing appeals from employers who do not agree with their assessed premium. With one exception, it has the authority to confirm, vary, or reverse only the specific decision being appealed.

- The decision being appealed must have first been dealt with by Employer Services, a department of the WCB, and a decision made.

- The ARC also hears issues on 'worker' status. This means an employer or worker can appeal to the ARC the decision as to whether that individual has worker status under the *Workers' Compensation Act*.

- The ARC also has been given the responsibility by the WCB to resolve disagreements arising from the transfer of claim costs.

- A written request to appeal to the ARC must be made within one year of the date the decision was made by Employer Services. However, the one-year limitation may be waived by the ARC Chair or designate, if there is deemed to be justifiable reason for extending the deadline.

- Similar to the CSRC, there is no appeal of the decision to either extend, or refuse to extend, the one-year limitation period in which to file a written notice requesting a review of an ARC decision.

4. Accountability

- The ARC is accountable to the Secretary and General Counsel of the WCB, and, ultimately, to the Board.

5. Reporting Relationships

- The ARC reports to the Secretary and General Counsel of the WCB.

6. Relevant Legislation

- The jurisdiction of the ARC is set out in Section 116 of the *Workers' Compensation Act.*

See Page 5 for a listing of key issues relating to Level I appeals.

F. What is the Appeals Commission?

1. The Appeals Commission Today

The current mission statement of the Appeals Commission (AC) is "to provide a timely, fair, and independent appeals process consistent with legislation, policy, and the principles of natural justice."

TABLE THREE
Appeals Commission Initial Appeals, 1995 - 1999

	1995	1996	1997	1998	1999
Number of AC Initial Appeals Received (from CSRC)	1,213	1,269	1,055	1,146	1,146
Number of AC Initial Appeals Received (from ARC)	34	34	25	48	32
Total Number of Initial Appeals Received by AC (from CSRC and ARC)	**1,247**	**1,303**	**1,080**	**1,194**	**1,178**
Number of AC Initial Appeals Finalized (from CSRC)	1,208	1,309	1,102	1,233	993
Percentage of AC Initial Appeals Finalized (from CSRC)	96%	97%	96%	93%	87%
Number of AC Initial Appeals Finalized (from ARC)	33	32	22	18	31
Percentage of AC Initial Appeals Finalized (from ARC)	97%	94%	88%	38%*	97%
Total Number of AC Initial Appeals Finalized (from CSRC and ARC)	1,241	1,341	1,124	1,251	1,024

* The low number of initial AC appeals finalized in 1998 was primarily due to one multi-issue appeal.

- In 1999, the Appeals Commission received 1,178 initial appeals from CSRC and ARC. 97% of these were appeals of CSRC decisions and 3% were appeals of ARC decisions.

- In 1999, 61% of total CSRC 'issues finalized' (as opposed to 'initial appeals') were upheld by the Appeals Commission, 26% were overturned, and 13% were modified.

- As of January 1, 1999, the Appeals Commission took an average of 83 days from the time an appeal was received to the hearing being scheduled (up from 68 days in January 1998). It took an average of 66 days from the time a hearing was scheduled to an appeal being finalized.

- Two types of hearings may be conducted by the Appeals Commission: documentary (files only), or in-person (with the appellant in attendance). During 1999, there were 789 (86%) in-person hearings, and 124 (14%) documentary hearings.

- While the Appeals Commission usually sits as a hearing panel of three, a panel of two is considered a quorum. A three-person hearing panel consists of a panel chair, one representative of employers' interests, and one representative of workers' interests.

- A hearing registrar is usually permanently assigned to a hearing panel. This person offers technical support and advice regarding legislation, policy, and WCB practice to appeal panels in the processing of matters before the Appeals Commission.

- Based on the written findings of the hearing panel, the Hearing Registrar prepares the initial and final draft decisions for review by the hearing panel. The Hearing Panel Chairman then signs the final decision.

2. Appointment Process

- The Chief Appeals Commissioner, who becomes Chairman of the Commission, and appeals commissioners are appointed by Order-in-Council on the recommendation of the Minister Responsible for the Workers' Compensation Board. Individuals with varied backgrounds, representing either workers' or employers' interests, are selected and appointed as appeals commissioners for terms of one to three years.

- Appeals commissioners' positions are publicly advertised; pre-screened by the Chief Appeals Commissioner; interviewed by a committee consisting of one employer representative, one worker representative, the Chief Appeals Commissioner, and a WCB human resources staff member. This committee makes recommendations for appointment to the Minister Responsible for the Workers' Compensation Board. The Minister presents the recommendations for appointment to Cabinet for approval. Based on Cabinet approvals, Orders-in-Council are presented to the Lieutenant Governor in Council for appointment.

- According to Section 5.1(2) of the *Act*, appeals commissioners cannot be current employees of the WCB, or members of the Board of Directors of the WCB. However, former members of the WCB Board of Directors and former employees of the WCB can be appointed as appeals commissioners.

- All operating costs of the Appeals Commission are paid from the Accident Fund, legislated under the *Act*. The Accident Fund is administered by the Board of Directors of the WCB.

3. Jurisdiction and Authority

Subject to section 8(7) of the *Act*,

> *"the Appeals Commission has exclusive jurisdiction to examine, inquire into, and determine all matters and questions arising under the Act and the Regulations in respect of:*
>
> - *appeals from decisions made by the Claims Services Review Committee under Section 40;*
> - *appeals from decisions of the Assessment Review Committee under Section 116;*
> - *appeals from determinations of the Board under Section 16(3) regarding a worker's entitlement to compensation; and,*
> - *any other matters assigned to it under this Act or any other Act or the regulations under this Act or any other Act."*

- The Appeals Commission can consider and rule on only entitlement or assessment matters that have been previously dealt with by the CSRC or the ARC. It cannot rule on new issues that have not been part of a claimant's appeal to the CSRC, or an employer's appeal to the ARC. However, it can hear new evidence or additional evidence relating to accepted matters of appeal.

- When a decision of the CSRC or the ARC is appealed, written notice of appeal must be received by the Appeals Commission within one year of the date of the CSRC or ARC decision.

- Under the *Act*, Subsection 8(7), the Appeals Commission is bound by WCB Board of Directors policies that relate to the matter under appeal. Section 8(7) states:

> *"In the hearing of appeals under this section the Appeals Commission is bound by policy determined by the board of directors that relates to the matter under appeal, and where the board of directors considers that the Appeals Commission has not properly applied that policy or the provisions of this Act and the regulations that are applicable to the matter under appeal, the board of directors may in writing direct the Appeals Commission to rehear the matter and to give fair and reasonable consideration to that policy or those provisions."*

- The majority of jurisdictions do not allow appeal panels to depart from policy in their decision-making process.

- Since its inception, there have been 113 applications to the Board of Directors under Subsection 8(7). These have been presented equally by individuals, and by consultants or advocates representing individuals or employers. Only 18 (15 %) have been successful.

- The Chief Appeals Commissioner has the discretion to extend the one-year limitation period in extenuating circumstances. There is no appeal of the Chief Appeals Commissioner's decision to extend or refuse to extend the limitation period.

4. Accountability

- The Appeals Commission is independent of the WCB. All appointments to the Appeals Commission are made by the Lieutenant Governor by Order-in-Council.

5. Reporting Relationships

- The Chief Appeals Commissioner reports to the Minister Responsible for the Workers' Compensation Board, as does the WCB Board of Directors.

6. Relevant Legislation

- The jurisdiction and mandate of the Appeals Commission is set out in Sections 7(1) and 12(2) to 12(6) of the *Act*.

See Page 6 for a listing of key issues relating to Level II appeals

G. What is the WCB Medical Panel?

- Medical boards were originally used by WCB in the 1960s. Specialization and medical advancement led to their replacement by independent medical examinations.

- On November 24, 1997, the WCB Board of Directors, in an effort to overcome differing medical opinions between WCB physicians and claimants' treating physicians, established Medical Panels.

- In January, 2000 an independent Medical Opinion Resolution Officer was hired to review appeals of medical reviews.

- During an appeal, the Panel reviews the medical documentation on the injured worker. The evidence-based decision is a consensus of medical experts:
  - one chosen by the injured worker
  - one chosen by the WCB
  - one chosen by both the injured worker and the WCB

- A case is deemed appropriate for a Medical Review Panel if the issue is complex and there are conflicting medical opinions.

See Page 4 for a listing of key issues relating to medical review.

H. What information is in the appendices?

There are three appendices that provide additional information that you may wish to review before completing the survey. These are:

- Appendix 1 - "Comparative Overview of Statutory Framework for Workers' Compensation Appeals in Alberta and Other Jurisdictions"

- Appendix 2- "History and Background of the WCB Appeal Systems and the Appeals Commission"

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Appendix 1

Comparative Overview of Statutory Framework for Workers' Compensation Appeals in Alberta and Other Jurisdictions

Jurisdiction	Internal	External	Judicial Statutory Appeal	Time Limit for Appeal	Judicial Review
Canada					
Alberta	CSRC, ARC	Appeals Commission	No	1 year	Yes
British Columbia	Review Board	Appeal Decision Medical Review Panel	No	90 days 90 days	Yes
Saskatchewan	WCB	Medical Review Panel	No	No Limit	Yes
Manitoba	Review Officer Assessment Committee	Appeal	No	No Limit	Yes
Ontario	Appeal Branch	Independent Appeal Tribunal	No	6 months	Yes
Quebec	Bureau de l'évaluation Medicale Administration Review Commission	Comission des Liaisons Professionnelles	No	30 days 30 days	Yes
New Brunswick	Appeal Tribunal		Court of Appeal	30 days for leave 10 days to file	Yes
Nova Scotia	Hearing Officer	WCAT*	Court of Appeal	30 days	Yes
PEI		Independent Appeal Tribunal	Supreme Court	No Limit	Yes
Newfoundland	None	Appeal Tribunal	Supreme Court	90 days	Yes

* Workers' Compensation Appeal Tribunal

Jurisdiction	Appeal Tribunal Internal	Appeal Tribunal External	Provisions for Statutory Appeal	Judicial Review
United States				
California	Workers' Compensation Appeals Board		Supreme Court of District Court of Appeals	No
Ohio	Hearing Officer		Court of Common Pleas	No
New York		Compulsory Arbitration	Supreme Court Appeals Division	No
Florida		Judges of Compensation Claims	District Court of Appeal	
Minnesota		Workers' Compensation Courts of Appeal	Supreme Court	No
Arizona			Arizona Court of Appeals Supreme Court	Yes
South Africa	Three person Review Commission		Supreme Court	Yes
England		Appeal Tribunal Commissioner	Court of Appeal (Eng.) (Scotland) Court of Session	Yes
Commonwealth of Australia (Federal)		Administrative Appeals Tribunal		Yes
Australian States				
Queensland		Magistrates Court Industrial Court	Court of Competent Jurisdiction	Yes
New South Wales		Compensation Court		Yes
South Australia		Workers' Compensation Tribunal	Supreme Court	Yes
Western Australia		Compensation Magistrates Court	Supreme Court	Yes
Northern Territory of Australia		Work Health Court	Supreme Court	Yes
Victoria		Magistrates Court County Court	Supreme Court	Yes
Tasmania		Workers' Rehabilitation and Compensation Tribunal	Supreme Court	Yes

Appendix 2

History and Background of the WCB Appeal Systems and the Appeals Commission

This appendix contains relevant history and background information on the WCB appeal systems. There are three sections relating to the CSRC, the ARC, and the Appeals Commission.

CSRC History and Background

- **Prior to 1948**. There was no legislated process to appeal WCB decisions. In 1948, the *Workers' Compensation Act* was revised and a formal appeal mechanism was created. Appealable matters and processes were also formalized. As claim appeals increased, the Board required their Claims Management to review specific appeal cases. Claims Management did not have the authority to hear appeals. They were required to make recommendations to the Board for decision.

- **1955**. A Claims Committee was established to review all cases where a claim was not considered acceptable by a claims adjudicator. A final decision was made by the Department. *The Workers' Compensation Act* was amended and matters defined as acceptable for appeal were deleted.

- **Mid-1950s and mid-1960s**. A formal Board of Review was set up that initially dealt with claims issues. Medical issues were resolved by a Medical Board whose decisions required Board approval. These decisions were not appealable.

- **1969**. A change in the *Workers' Compensation Act* gave powers of adjudication and review previously allocated only to the Board to staff designated by the Board.

- **1972**. A Select Committee of the Alberta Legislature recommended that a Review Committee be formed with the authority to review all decisions made by the WCB Claims Department.

- **January 1, 1973**. The Claims Review Committee became a legislated review body dealing with claims decisions. Any cases involving extraordinary circumstances beyond standard WCB policy or practice were reviewed by the Claims Review Committee and recommendations made to Board Members for approval.

- **1980**. The Claims Review Committee became the Claims Services Review Committee. Several key changes in authority were given by the Board to the newly-named Committee. These were:
  - dealing directly with cases of extraordinary circumstances without referring them to the Board; and,
  - addressing vocational rehabilitation issues.

- **November 1, 1988**. The *Workers Compensation Act* was amended and the new corporate Board adopted existing policies. The CSRC now made their decisions based on legislation, regulation, and Board policy. As well, decisions made by the CSRC could now be appealed to the newly-legislated Appeals Commission.

ARC History and Background

- **1977**. The ARC was created by a WCB Board Order to consider appeals by employers about claim assessment matters. It initially operated as a separate entity from Assessment Department of the WCB (later called the Employer Services Department).

- **1981**. The ARC came under the Assessment Department. It was administered by a director and managers of the Assessment Department.

- **November 1983**. A full-time ARC Chair was appointed. The review function was removed from the Assessment Department.

- **November 1988**. The Appeals Commission was established. Prior to this, the WCB Board of Directors heard appeals of ARC decisions.

Appeals Commission History and Background

- **1918**. Alberta workers' compensation legislation was enacted. From 1948 to 1973, workers and employers appealed directly to the Workers' Compensation Board.

- **1973**. A WCB review committee was established that would, upon written request, carry out a detailed review of a worker's file to identify if the claim had been properly assessed and all entitled benefits received. That appeal process was still internal to the WCB with final appeal made directly to the Board.

- **1988**. A discussion paper entitled *The Workers' Compensation Board - Shaping the Future*, was written by the WCB for the Minister Responsible for the Workers' Compensation Board. In it, the Board called for a continuation of the internal appeal process.

- **November 1, 1988**. Major changes were made to the *Workers' Compensation Act*. This included the development and establishment of the Appeals Commission as the final level of appeal for CSRC and ARC decisions. The Appeals Commission was created under legislation as a quasi-judicial body independent from the WCB.

- **March 1989**. The Appeals Commission began its work with two full-time Appeals Commissioners, a full-time Chairman/Chief Appeals Commissioner and eight part-time Appeals Commissioners.

- **February 1995** The Minister Responsible for the Workers' Compensation Board commissioned a review of the operations of the Appeal Commission which was conducted by Andrew C.L. Sims,Q.C. The final report contained 51 recommendations. The Appeals Commission has implemented the majority of these recommendations as outlined in their 1996 and 1997 Annual Report.

Appendix 3

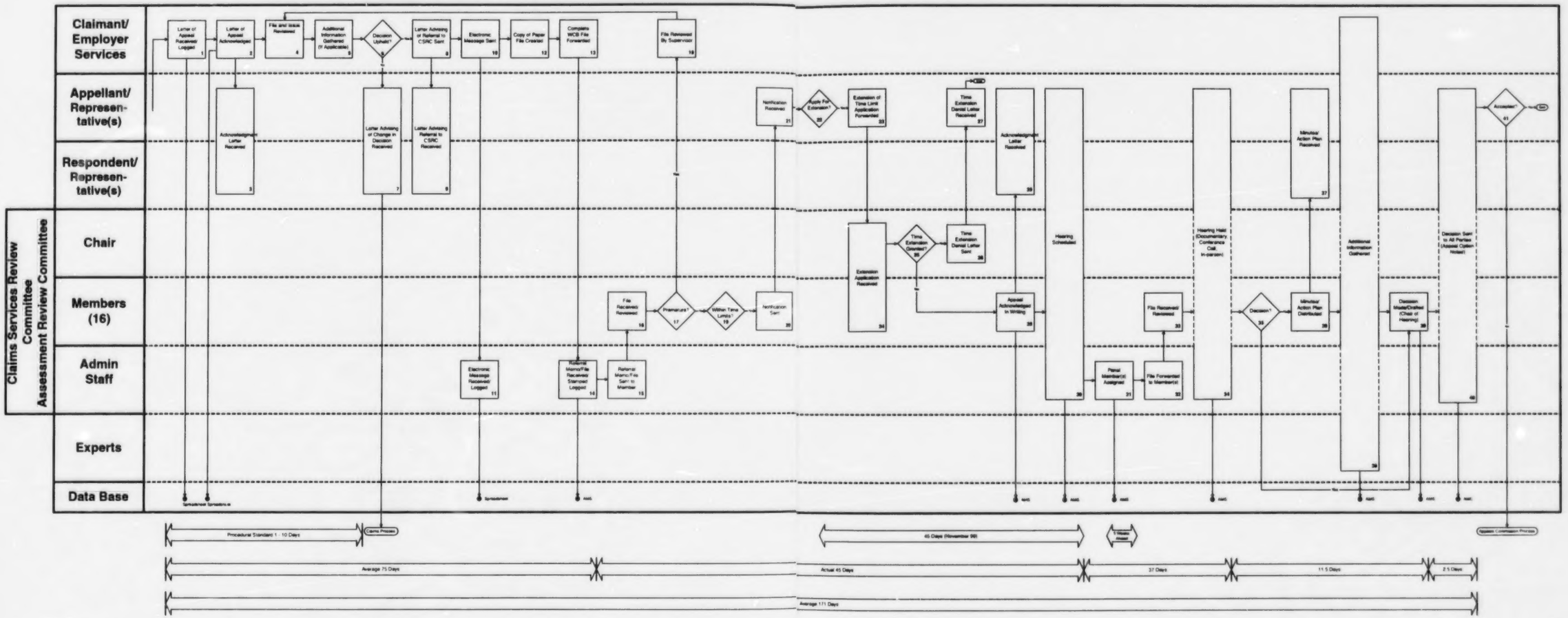
CSRC/ARC Process Map and Appeals Commission Process Map

- The following two pages illustrate the appeal process for the CSRC, ARC and the Appeals Commission. The process maps show the main steps in the process of reaching a decision on a claimant's appeal at the first and second levels of appeal. These maps can be used to identify issues with the steps in both processes.

- To easily read the maps, keep the following in mind:
  - Read from left to right.
  - Key players are identified in the left-hand column.
  - Each key player has its own 'band', drawn horizontally across the page.
  - In each box, functions or actions are described. If a step involves many key players, the box is stretched from the top to bottom of the page to show the players involved in that step.
  - If a key player is not involved in a step, broken lines are drawn through that player's band as part of the vertically drawn box.
  - Diamonds are drawn to indicate decision points.
  - Exit arrows are marked 'yes' or 'no', leading to the next step in the process.
  - At the bottom of each map, the average number of days to complete a step or a grouping of steps is shown.

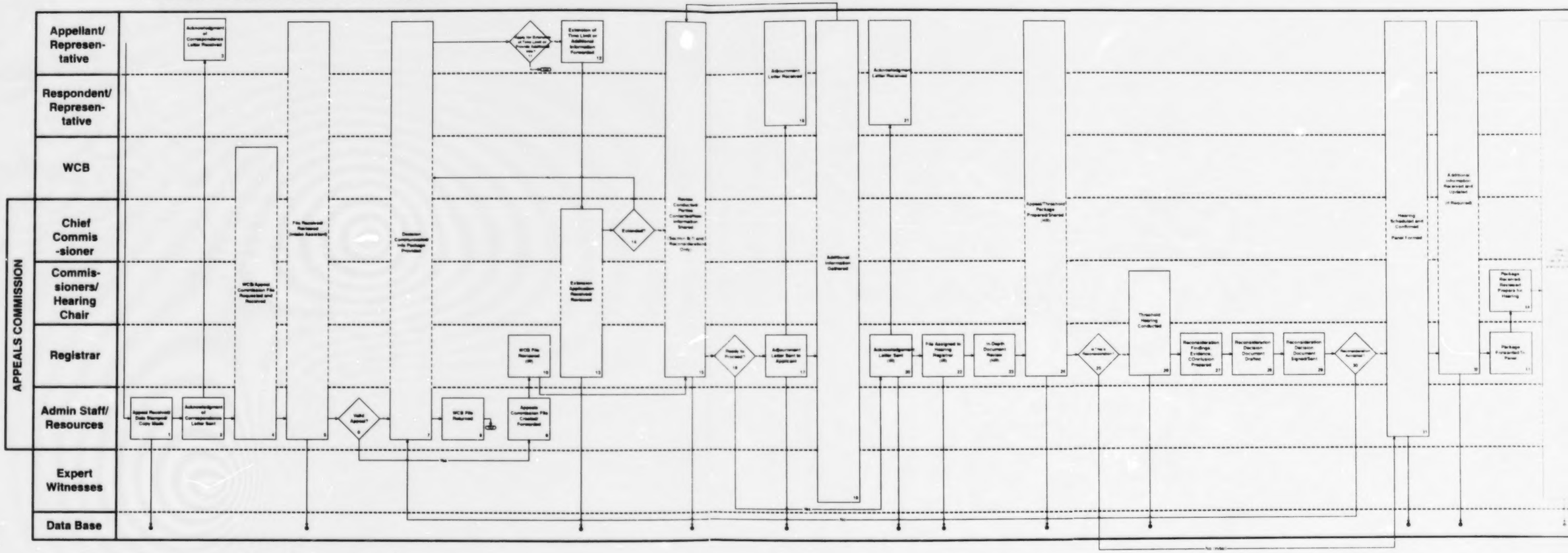
- **You can use these process maps when completing the survey.**
  The steps on the process maps are numbered. At the end of the enclosed survey, space has been provided for you to provide comments. If you have an issue with any of the steps of decision points shown on the map, please use the corresponding number to identify the exact point in the process that concerns you and explain why. Be sure to indicate the name of the map to which you are referring.

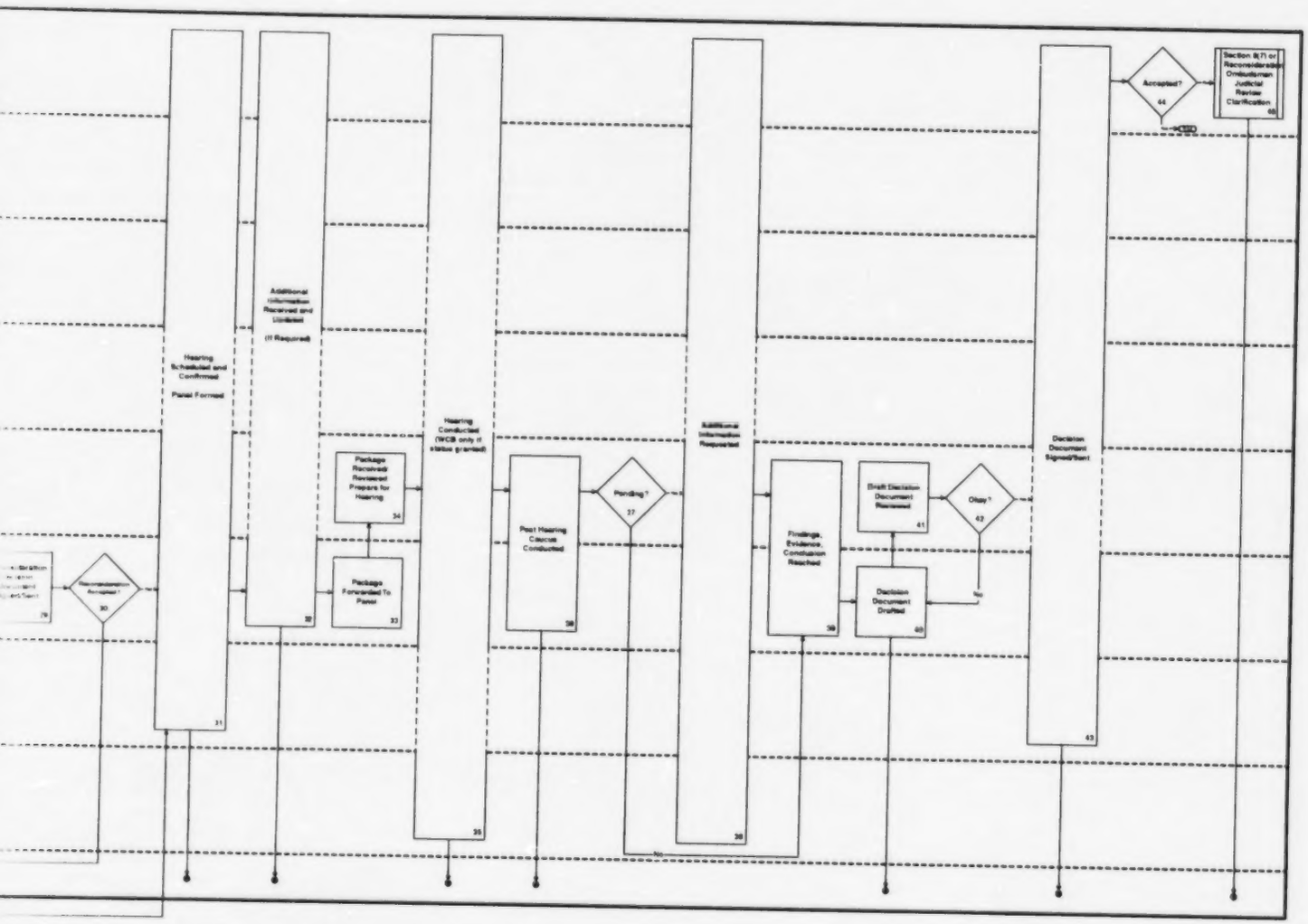
CLAIMS SERVICES REVIEW COMMITTEE - PROCESS / ASSESSMENT REVIEW COMMITTEE - PROCESS



*Note: Statistical information based on averages as of November 1998

APPEALS COMMISSION PROCESS




Hearing Scheduled and Confirmed
Panel Formed
31
Additional Information Received and Updated
(If Required)
32
Package Received, Reviewed, Prepare for Hearing
34
Package Forwarded To Panel
33
Hearing Conducted (WCB only if status granted)
35
Post Hearing Caucus Conducted
36
Pending?
37
Additional Information Requested
38
Findings, Evidence, Conclusion Reached
39
Draft Decision Document Reviewed
41
Okay?
42
Decision Document Drafted
40
No
Decision Document Signed/Sent
43
Accepted?
44
Section 6(7) or Reconsideration/ Ombudsman Judicial Review Clarification
45